

3. It is CTX's position that this information is protected by CTX's and its Board members' First Amendment rights of Freedom of Religion and Freedom of Association, as well as the Religious Freedom Restoration Act. CTX contends that LCMS's request for this information cannot satisfy the exacting scrutiny required to override these privileges particularly because it does not have a right to pursue a cause of action against the Regents.

4. It is LCMS's position that it has pleaded a cause of action against the John Doe Regents for breach of fiduciary duties and is entitled to discover their names. LCMS further claims that the First Amendment rights of Freedom of Religion and Freedom of Association as well as the Religious Freedom Restoration Act do not protect CTX from the discovery. It is also LCMS's position that the validity of its pled cause of action is an issue to be resolved on summary judgment and is irrelevant to the resolution of the discovery dispute.

5. **CTX's claimed First Amendment privileges and privileges under the Religious Freedom Restoration Act (RFRA).** The Parties believe the voting privilege issue is very similar to this issue and the Court's resolution might also address: a) request numbers 1-5, 7-25, 27-33, and 36-58 in LCMS's subpoena to former CTX Regents; b) LCMS's Request for Production to CTX numbers 9, 11, 22, 23, 24, 25, 27, and 40, as well as any other request in which CTX stated it would produce non-privileged information; and c) LCMS's interrogatories to CTX numbers 1-7 and 12-14.

6. CTX contends that disclosure of documents and communications among CTX's Officers and Regents (current and former) regarding the contested CTX resolutions, Synod governance of CTX, CTX's relationship with Synod, and CTX's governance violate CTX's and its governing Board and Officers' First Amendment rights to Freedom of Religion and Freedom of Association. CTX has provided briefing to this Court for the basis of these privileges. Given the volume of

requests and potentially responsive material, and CTX's production of documents responsive to LCMS's requests, any delay in production has not been in bad faith. CTX seeks only the ability to adequately review responsive material and to preserve its privileges.

7. It is LCMS's position that CTX has no right to claim a 1st Amendment privilege against LCMS and briefed that position to the Court. It is also LCMS's position that CTX has waived its First Amendment privileges by not asserting them in its first written response to LCMS's discovery requests.

8. **Zachman, Hill and Taylor subpoenas and subpoena duces tecum.** The Parties agree to the resolution of this issue and request an Order from the Court that the former Regents Tom Zachman, Nathaniel Hill and Alan Taylor submit documents responsive to subpoenas issued by LCMS to counsel for CTX for review and production pursuant to the Agreed Protective Order which would allow CTX the ability to receive, review, and produce a privilege log of withheld materials produced by former Regents responsive the subpoena deuces tecum.

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of November 2024, I electronically filed the above and foregoing document, which will send notification of such filing to:

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